

year for each crop for which the reconstitution is initiated before the planting of such crop begins or would have begun.

(d) Notwithstanding the provisions of paragraph (c) of this section, a reconstitution may be effective for the current year if the county committee determines, and the State committee concurs, that the purpose of the request for reconstitution is not to perpetrate a scheme or device designed to evade the requirements governing programs found in this title.

§ 718.205 Substantive change in farming operation, and changes in related legal entities.

(a) Land that is properly constituted as a farm shall not be reconstituted if:

(1) The reconstitution request is based upon the formation of a newly established legal entity which owns or operates the farm or any part of the farm and the county committee determines there is not a substantive change in the farming operation;

(2) The county committee determines that the primary purpose of the request for reconstitution is to:

(i) Obtain additional benefits under one or more commodity programs;

(ii) Avoid damages or penalties under a contract or statute;

(iii) Correct an erroneous acreage report; or

(iv) Circumvent any other program provisions. In addition, no farm shall remain as constituted when the county committee determines that a substantive change in the farming operation has occurred which would require a reconstitution, except as otherwise approved by the State committee with the concurrence of the Deputy Administrator.

(b) In determining whether a substantive change has occurred with respect to a farming operation, the county committee shall consider factors such as the composition of the legal entities having an interest in the farming operation with respect to management, financing, and accounting. The county committee shall also consider the use of land, labor, and equipment available to the farming operations and any other relevant factors that bear on the determination.

(c) Unless otherwise approved by the State committee with the concurrence of the Deputy Administrator, when the county committee determines that a corporation, trust, or other legal entity is formed primarily for the purpose of obtaining additional benefits under the commodity programs of this title, the farm shall remain as constituted, or shall be reconstituted, as applicable, when the farm is owned or operated by:

(1) A corporation having more than 50 percent of the stock owned by members of the same family living in the same household;

(2) Corporations having more than 50 percent of the stock owned by stockholders common to more than one corporation; or

(3) Trusts in which the beneficiaries and trustees are family members living in the same household.

(d) Application of the provisions of paragraph (c) of this section shall not limit or affect the application of paragraphs (a) and (b) of this section.

§ 718.206 Determining farms, tracts, allotments, quotas, and bases when reconstitution is made by division.

(a) The methods for dividing farms, tracts, allotments, quotas, and bases in order of precedence, when applicable, are estate, designation by landowner, contribution, cropland, DCP cropland, default, and history. The proper method shall be determined on a crop by crop basis.

(b)(1) The estate method is the pro-rata distribution of allotments, quotas, and bases for a parent farm among the heirs in settling an estate. If the estate sells a tract of land before the farm is divided among the heirs, the allotments, quotas, and bases for that tract shall be determined according to paragraphs (c) through (h) of this section.

(2) Allotments, quotas, and bases shall be divided in accordance with a will, but only if the county committee determines that the terms of the will are such that a division can reasonably be made by the estate method.

(3) If there is no will or the county committee determines that the terms of a will are not clear as to the division of allotments, quotas, and bases, such allotments, quotas, and bases shall be apportioned in the manner agreed to in

writing by all interested heirs or devisees who acquire an interest in the property for which such allotments, quotas, and bases have been established. An agreement by the administrator or executor shall not be accepted in lieu of an agreement by the heirs or devisees.

(4) If allotments, quotas, and bases are not apportioned in accordance with the provisions of paragraphs (b)(2) or (b)(3) of this section, the allotments, quotas, and bases shall be divided pursuant to paragraphs (d) through (h) of this section, as applicable.

(c)(1) If the ownership of a tract of land is transferred from a parent farm, the transferring owner may request that the county committee divide the allotments, quotas, and bases, including historical acreage that has been double cropped, between the parent farm and the transferred tract, or between the various tracts if the entire farm is sold to two or more purchasers, in a manner designated by the owner of the parent farm subject to the conditions set forth in paragraph (c)(3) of this section.

(2) If the county committee determines that allotments, quotas, and bases cannot be divided in the manner designated by the owner because of the conditions set forth in paragraph (c)(3) of this section, the owner shall be notified and permitted to revise the designation so as to meet the conditions in paragraph (c)(3) of this section. If the owner does not furnish a revised designation of allotments, quotas, and bases within a reasonable time after such notification, or if the revised designation does not meet the conditions of paragraph (c)(3) of this section, the county committee will divide the allotments, quotas, and bases in a pro-rata manner in accordance with paragraphs (d) through (h) of this section.

(3) A landowner may designate a manner in which allotments, quotas, and bases are divided according to this paragraph.

(i) The transferring owner and transferee shall file a signed written memorandum of understanding of the designation with the county committee before any CCC or FSA prescribed form, letter or contract providing an allotment, base or quota is issued and

before a subsequent transfer of ownership of the land. The landowner shall designate the allotments, quotas, and bases that shall be permanently reduced when the sum of the allotments, quotas, and bases exceeds the cropland for the farm.

(ii) Where the part of the farm from which the ownership is being transferred was owned for a period of less than 3 years, the designation by landowner method shall not be available with respect to the transfer unless the county committee determines that the primary purpose of the ownership transfer was other than to retain or to sell allotments, quotas, or bases. In the absence of such a determination, and if the farm contains land which has been owned for less than 3 years, that part of the farm which has been owned for less than 3 years shall be considered as a separate farm and the allotments, quotas, or bases, shall be assigned to that part in accordance with paragraphs (d) through (h) of this section. Such apportionment shall be made prior to any designation of allotments, quotas, and bases with respect to the part that has been owned for 3 years or more.

(4) The designation by landowner method is not applicable to crop allotments or quotas which are restricted to transfer within the county by lease, sale, or by owner, when the land on which the farm is located is in two or more counties.

(5) The designation by landowner method may be applied at the owner's request to land owned by any Indian Tribal Council which is leased to two or more producers for the production of any crop of a commodity for which an allotment, quota, or base has been established. If the land is leased to two or more producers, an Indian Tribal Council may request that the county committee divide the allotments, quotas, and bases between the applicable tracts in the manner designated by the Council. The use of this method shall not be subject to the conditions of paragraph (c)(3) of this section.

(d)(1) The contribution method is the pro-rata distribution of a parent farm's allotments and quotas to each tract as the tract contributed to the allotments and quotas at the time of combination

and may be used when the provisions of paragraphs (b) and (c) of this section do not apply.

(2) The county committee determines and the State committee or a representative thereof concurs, that the use of the contribution method would not result in an equitable distribution of allotments and quotas, considering available land, cultural operations, and changes in type of farming.

(e) The cropland method is the pro-rata distribution of allotments and quotas to separate tracts proportionately to the tract's contribution to the cropland for the parent tract. This method shall be used if paragraphs (b) through (d) of this section do not apply unless the county committee determines that division by the history method would result in more representative allotments and quotas than the cropland method, taking into consideration the operation normally carried out on each tract for the commodities produced on the farm.

(f)(1) The history method is the pro-rata distribution of allotments and quotas to separate tracts on the basis of the operation normally carried out on each tract of the parent farm. The county committee may use the history method of dividing allotments and quotas when it:

(i) Determines that this method would result in a more accurate pro-rata distribution of allotments and quotas based on actual contribution of the tract to the totals of the parent farm than the cropland method would; and

(ii) Obtains written consent of all owners to use the history method.

(2) The county committee may waive the requirement for written consent of the owners for dividing allotments and quotas if the county committee determines that the use of the cropland method would result in an inequitable division of the parent farm's allotments and quotas and the use of the history method would provide more favorable results for all owners.

(g) The DCP cropland method is the pro-rata distribution of bases to the resulting tracts in the same proportion to the DCP cropland that each resulting tract bears to the DCP cropland for the parent tract. This method of divi-

sion shall be used if paragraphs (b) and (c) of this section do not apply.

(h) The default method is the separation of tracts from a farm with each tract maintaining the bases attributed to the tract when the reconstitution is initiated.

(i)(1) Allotments, quotas, and bases apportioned among the resulting farms pursuant to paragraphs (d) through (h) of this section may be increased or decreased with respect to a farm by as much as 10 percent of the parent farm's allotment, quota, or base determined under such subsections for the parent farm if:

(i) The owners agree in writing; and

(ii) The county committee determines the method used did not provide an equitable distribution considering available land, cultural operations, and changes in the type of farming conducted on the farm. Any increase in an allotment, quota, or base with respect to a tract pursuant to this paragraph shall be offset by a corresponding decrease for such allotments, quotas or bases established with respect to the other tracts which constitute the farm.

(2) Farm program payment yields calculated for the resulting farms of a division may be increased or decreased if the county committee determines the method used did not provide an equitable distribution considering available land, cultural operations, and changes in the type of farming conducted on the farm. Any increase in a farm program payment yield on a resulting farm shall be offset by a corresponding decrease on another resulting farm of the division.

(j) If a farm with burley tobacco quota is divided through reconstitution and one or more of the farms resulting from the division are apportioned less than 1,000 pounds of burley tobacco quota, the owners of such farms shall take action as provided in part 723 of this chapter to comply with the 1,000 pound minimum by July 1 of the current year or the quota shall be dropped. Exceptions to this are farms divided:

(1) Among family members;

(2) By the estate method; and

(3) When no sale or change in ownership of land occurs; or

(4) With one resulting farm receiving all of the quota.